

**Montana Home and Community Based Settings Rule:
Public Input Activities, Public Comment and Department of Public Health & Human Services'
Responses**

Montana's State Medicaid Agency (SMA), the Department of Public Health and Human Services (DPHHS), submits the attached proposed Transition Plan in accordance with requirements set forth in the Centers for Medicare and Medicaid Services (CMS) Home and Community Based Services (HCBS) Settings Rule released on January 16, 2014.

The following information is a summary description of the public comment activities Montana has completed in preparation for submission of the transition plan. A high level settings assessment will be submitted separately to CMS.

Section 1: Public Input Activities

1) Public information material and meetings

- a) An informational overview document was mailed out to all individuals receiving HCBS services, providers of HCBS services, case management agencies and stakeholder groups between October 1, 2014 and October 14, 2014. In total, DPHHS mailed the information to 5819 members, their families, providers, and stakeholders. This mailing included a memo with information on how to view and comment on the purposed transition plan, as well as the details of Montana's public meeting scheduled for October 28, 2014.

The informational overview and a similar memo were mailed to members and interested parties of Montana's Medicaid advisory committee, the Montana Health Coalition, on October 1, 2014.

Tribal Consultation letters were mailed October 6, 2014.

Public notice was published in the state's three largest newspapers on October 10 and 12, 2014. This information was also available on Montana's DPHHS HCBS webpage <http://www.dphhs.mt.gov/hcbs.aspx> by October 1, 2014.

- b) A public meeting was held on October 28, 2014, in Helena, Montana with the option to participate in person or via webinar and/or phone. A recording of the public meeting was posted on Montana's HCBS website on October 29, 2014. There were 111 attendees in total.

2) State posting of draft transition plan for public comment

- a) On October 9, 2014 the transition plan and related documents were posted at: <http://dphhs.mt.gov/hcbs.aspx>. Individuals could provide comments online through the website, via the US postal service, by telephone, or by directly emailing a central DPHHS staff person who tracked and recorded all public comment.
- b) The comment period extended from October 10 – November 10, 2014.
- c) Documents were emailed to CMS on December 12, 2014.
- d) The final version of the Transition Plan submitted to CMS was posted on the Montana HCBS website effective December 12, 2014.

Transition Plan Public Comments

The State received 3 online comments, 2 comments via mail, and 4 comments via the online comment form, totaling 9 written public comments. A public hearing was held on October 28, 2014 in which 55 people were in attendance and 56 attended via webinar and/or phone. Thirteen comments were received during the public hearing from the attendees, both onsite and via the phone. The vast majority of comments received were from family members or representatives of members receiving services in the state's HCBS programs, providers of the HCBS waiver services, and advocacy groups

Summary of Comments on the Transition Plan and the Department' Responses

Names have been redacted to maintain confidentiality.

Comments pertaining directly to the proposed transition plan and the State's responses are documented below. DPHHS did not make any changes to the transition plan based on the public comments that were received. As outlined in the transition plan, there will be further opportunity for public input as the transition plan progresses.

Comments requesting an explanation of the informational letter sent by the state were addressed as the State received them by providing a verbal explanation of the information that was sent out.

DPHHS also received many comments at the public meeting, via the telephone, and in writing that did not pertain directly to the proposed transition plan. The majority of these comments pertained to the effect of the new regulations on individual services. DPHHS values the commenters' questions and concerns. However, the purpose of this comment period was to address the transition plan itself; therefore, comments outside the scope of this public comment period are not addressed in this venue. There will be further opportunity for feedback as the transition plan progresses; and the comments received which were out of scope for this comment period will be taken into consideration as they become applicable to the process.

Comments Directly Related to the Transition Plan/Planning Process

Comment: Where are the new Administrative Rules of Montana related to the transition?
(Provider, phone call)

Response: The Administrative Rules of Montana have not yet been amended as a result of the transition plan. In the transition plan, under the Program Administration tab, the dates in which Administrative Rule amendments will occur are delineated as 'to be determined'. Administrative rules will be amended in accordance with the Montana Administrative Procedure Act and will be published for public feedback when further details have been finalized. The Montana Administrative Procedure Act allows for further formal public comment.

Comment: In a statement put out by the National Senior Citizen's Law Center and the National Disability Rights Network, it says a CMS official confirmed that any comment period for a transition work plan or for an interim-transition plan does not lessen a state's obligation to solicit and accept public comment on final transition, so I have two questions regarding this-when will a more detailed transition plan come out that people then can comment on and being that the comment period on the transition plan started on October 10 how can that comment period start on a transition plan that doesn't exist yet?
(Provider/Member, transcribed from public hearing recording)

Response: This is the transition plan that the Department believes needs to be in place to be compliant with CMS, so there will not be a more detailed plan submitted. There will be further details added as time progresses as well as further opportunity for public input, but this comment period provides the opportunity for comments on the initial transition plan that will be submitted to CMS.

Comment: I have concerns about if the pieces are being written as you go then what are you exactly submitting to CMS at this point because we all know these rules have been in existence since January. So could you give some comments about, like for instance, corrective action plans, because I am assuming you're submitting some of the paperwork that you're currently using, so that is one of my questions.
(Provider, transcribed from public hearing recording)

Response: The Department believes the transition plan meets CMS requirements. This is the Department's "plan to plan". The transition plan delineates further actions the Department will take and the opportunities for public input. At this time, the Department cannot submit further documentation such as a corrective action plan. As an example, a settings assessment must be done before we can determine if a corrective action plan would need to be done.

Comment: My comment would be that I would like that it (the plan) to say or we would like it to say submit "draft plan" to CMS instead of final plan to say draft since we don't know what the final plan is and we may all not be here 3 years from now. Someone may look at that (the plan) and say, "oh this was the final plan and we cannot make any changes". So draft instead of final it might relieve some concern.
(Advocate, transcribed from public hearing recording)

Response: CMS requires the State to submit a final transition plan for their review which incorporates public feedback as appropriate.

Comment: We receive services as well as provide waiver services at the center. My comment would be to involve partnerships with already existing agencies that are focused on the research, which is The Rural Institute, to help develop the assessment tool to ensure reliability of the tool because there is a huge concern when it comes to the tool, the actual scientific base of the tool, ensuring the reliability with the other. I believe if we're going to take in the opinions of those residents, but at the same time I think we need to be involved in options counseling and realize the opportunities outside of their current living conditions. Because many individuals may be scared of the change and do not realize the options that are available to them and the capabilities they have to live in the community. (Provider/Member, transcribed from public hearing recording)

Response: We will be developing a provider self-assessment tool and a member survey. The proposed tools will be available on the website for public review as they are being developed. The transition plan describes the steps the Department will take to ensure that members are informed of their rights under the new HCBS settings rule. Members will be given timely notice and due process, and will have a choice of alternative settings/providers through a person centered planning process.

Comment: We also provide waiver services. My comment ties in a little bit with the previous commenter, just to evaluate the assessment tool but more specifically is the timeline. I have a concern that some of these are a little bit unrealistic; there are four months to develop the tool and only one month for providers and members to provide feedback, and then a month for the state to develop the final tool. So I'd like to see that maybe those timelines are adjusted to get feedback and maybe if the state has time to come back with another draft assessment for more feedback before there's a final. (Provider, transcribed from public hearing recording)

Response: The Department is interested in receiving feedback regarding a more realistic timeframe for members, providers, and advocates on the tool. The timeframes in 2015 and in 2017 are extended to accommodate the demands on all stakeholders during legislative sessions. (Note -No further comment or suggestions were received by the Department regarding timelines.)

Comment: Has CMS provided you guidance for facilities and programs to, and I know they have provided some, but I want to make sure that when we are developing the tool that providers, consumers and families know exactly what compliance means. (Provider, transcribed from public hearing recording)

Response: CMS continues to provide guidance at the federal website, Medicaid.gov: <http://www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/home-and-community-based-services.html>.

Comment: I have two or three comments. My first comment is that throughout the plan I do not see a reference to case managers or case management teams which are an integral piece of the home and community based service program, particularly when it comes to assessment and getting feedback from members that involvement of case management is critical. Speaking to the onsite assessment, about potentially contracting with a third party to do the site assessments, at a minimum I think there needs to be someone involved with the site assessment team that is very knowledgeable about home and community based services and the community like setting that the facilities need. Also as part of the

assessment I think it is a good idea as you have lined out to do, surveys of members but I think that is part of the actual site assessment consumers should be interviewed a well. (Provider, transcribed from public hearing recording)

Response: The Department will continue to solicit feedback from all stakeholders as we develop the tools in the transition plan. The Department's intention is to complete thorough assessments of both the site and member experience.

Comment: An advocacy organization wrote to comment on the Montana Department of Public Health and Human Services (DPHHS) Home and Community Based Services (HCBS) Transition Plan on the Centers for Medicare and Medicaid Services' (CMS) Final Rule [CMS 2249-F and CMS 2296-F]. We are glad to see that DPHHS is moving forward to implement CMS' HCBS Settings rule, which will help ensure that older Montanans who receive Long-Term Services and Supports (LTSS) through the state can have full access to the benefits of community living and receive services in the most integrated settings. This step — one of many — will allow Montana to comply with new standards in CMS's final rule and augment the state's HCBS programs. We are very familiar with efforts to promote HCBS options in Medicaid and ensure that necessary services are available to allow people to age in their homes and communities, especially among seniors who often have less access to HCBS than other populations. We have long advocated for improvements to the quality of LTSS services, breaking down barriers to access, and developing better coordination and integration of LTSS with other services. Although Montana has made some progress over the years to rebalance its Medicaid LTSS spending towards HCBS, more work remains to be done to modify the state's Medicaid waivers and state plan options that continue to increase HCBS funding to services in settings that are home and community based in nature. Montana's transitional plan sets forth a number of key steps toward the ultimate goal of full integration of CMS' rule into state policy. As noted in the DPHHS' Fact Sheet this "Montana's draft transition plan addresses the areas of assessment remediation, and public input. We agree that the plan does outline, at the broadest level, the timelines around certain activities and some of the groups involved in the process. However, this plan lacks significant details regarding the proposed outcomes of the activities, the full range of stakeholders involved in the transition, how the activities will impact both older adults and disabled populations, and specific timelines with benchmarks. We believe that a future, more detailed, and final transitional plan should be issued in order to break down how the state will implement these important principles in the proposed transition plan and ensure that older Montanans, for whom transitioning across settings may be particularly difficult receive consistent quality care in the process. According to the CMS final rule, within one year of the effective date of these regulations (i.e., by March 17, 2015), or earlier if the state submits a renewal or amendment for an existing state plan or waiver, states must submit a transition plan detailing how they will operate existing HCBS waivers and state plan benefits in accordance with the final rule. Transition plans must include all elements, including timelines and deliverables, as approved by the U.S. Secretary of Health and Human Services. CMS's recent Toolkit' provides additional guidance about the requirements for transitional plans and we look forward to DPHHS' development of a more detailed transitional plan in the near future. We are particularly aware that assisted living settings will be a challenge as DPHHS implements this transition. For many seniors in Montana assisted living provides an appropriate level of care, where an individual can receive important support services. We encourage DPHHS to work with Montana's Assisted Living providers to meet these new rules and maintain a variety of setting available to seniors. We are

appreciative of the progress that DPHHS has made to date and we remain committed to monitoring, along with other stakeholders, the continued progress of future stages of Montana's implementation of the rule.

Response: The Department believes the transition plan meets CMS requirements. This is the Department's "plan to plan". The transition plan delineates further actions the Department will take and the opportunities for public input.

Comment:

- The CMS rules are broad and appear to give a great deal of latitude to states in how they are to be implemented. We would ask that DPHHS not become overly prescriptive in its interpretation of the rules, require more than the federal government intended, or disallow settings not specifically stipulated in the rules.
- Consider the financial impact to providers and the people we serve as we move toward independence that requires one-on-one support, additional transportation, etc.
- Please be open to the experiences people are having in a given setting. The setting itself is much less important than what occurs within the setting. If the experience that occurs in a setting is promoting integration or teaching skills that will assist a person in living a more typical and independent life, then the setting in which the experience is transpiring becomes less significant. Additionally, people typically congregate for certain activities with their peers, we should be mindful not to restrict that choice from the people we serve.
- Consider responsibility of providers when individuals are engaged in the community at their will. Who is accountable for each person's health and safety?
- Segregation is not just geographic but attitudinal as well. It could be more detrimental to require people to complete activities in a "community" setting just because it is considered "integrated." People should be able to access the library or recreation center to browse books or exercise. However, expecting all activities to take place in these types of settings is atypical (I attend class in a classroom...not the community room at the library), atypical situations single people out and can lead to them being a spectacle rather than valued community members.
- It is our hope that the department will convene a stakeholder advisory committee soon to provide input in all aspects of the transition process. We would welcome the opportunity to have a staff representative on that advisory committee. Because of our consultation with other affiliates across the country, we specifically offer to provide input in development of the provider self-assessment tool.
- We believe that the use of the member assessment tool will be vital to compile setting satisfaction data.
- Please consider the various and unique person-centered approaches used by providers when creating assessment tools and conducting on-site setting assessments by evaluating if community integration, preferred socialization, independence, and choice is being incorporated into the daily activities, the structure, and the processes within programs.
- We appreciate that person-centered planning has been incorporated in Montana's Medicaid HCBS waivers for several years, notably the "personal supports plan" used for individuals with intellectual/developmental disabilities, the "service plan" used for individuals on the Big Sky HCBS Program, and most recently implemented under the Community First Choice state plan option.
(Provider, bullets points extracted from letter)

Response: The final HCBS rule defines requirements for: person centered planning in service plan development; home-like environments for residential settings; and community settings that do not isolate members. The Department will continue to solicit feedback from all stakeholders as we develop the tools in the transition plan.